ing that a change in judicial interpretation of a statute becomes a part of the statute. * * * Our courts have always been quick to deny the charge of magnifying their authority or indulging in judicial legislation."

J. R. R.

THE DOCTRINE OF EXEMPLARY DAMAGES IN ITS APPLICATION TO CORPORATIONS.—During the past year, three cases have been decided by the Supreme Courts of California, Oklahoma and Wisconsin, involving the liability of a corporation to respond in exemplary or punitive damages for the malicious acts of its officers and servants. *Lowe* v. *Yolo Consolidated Water Co.* (1910), — Cal. —, 108 Pac. 297; *Chicago, R. I. & Pac. Ry. Co.* v. *Newburn* (1910), — Okla. —, 110 Pac. 1065; *Topolewski* v. *Plankinton Packing Co.* (1910), — Wis. —, 126 N. W. 554. The Oklahoma and Wisconsin courts, applying the rule heretofore prevailing in those states, held that a corporation cannot be charged with exemplary damages for the wanton and malicious acts of its servants, in the absence of evidence showing that the corporation participated in or authorized the commission of the tortious act or subsequently ratified it. In the California case, the act complained of was committed by the president and general manager of the corporation, and the Supreme Court of California held that a corporation may, because of the acts of those whom it has placed in charge of its affairs, be held guilty of oppression and malice, making it liable for exemplary damages.

Whether the doctrine of *respondeat superior* should be extended in the case of a corporation so as to render the corporation liable for more than compensatory damages for the malicious act of its agents and servants, has been the subject of vigorous controversy in this country and England. In the early part of the last century, the rule was universally announced by the courts, that, malice being the foundation of the doctrine of exemplary damages, such damages could not be charged against a corporation in any case. It was then argued that a corporation, being a mere legal entity, without a soul or animate body or moral sense, was incapable of entertaining a malicious intent, and consequently that an action for a wrong, in the constitution of which malice is an essential element, could not be maintained against a corporation. This doctrine, however, is no longer of more than historical importance, having been repudiated by English and early American decisions. *Whitefield* v. *S. E. Ry. Co.*, 96 E. C. L. 115; *Green* v. *London General Omnibus Co.*, 29 L. J. C. P. 13, 1 L. T. (N. S.) 95; *Goodspeed* v. *E. Haddam Bank*, 22 Conn. 529; *Railroad Co.* v. *Quigley*, 21 How. 204.

But although the courts of this country now universally recognize that there is nothing inherent in the nature of a corporation which should preclude the imposition of exemplary damages on the corporation for the malicious acts of its agents and servants, yet as to the *circumstances* under which a corporation may render itself so liable, the courts are at variance.

That a corporation is not liable to be punished by exemplary damages for the malicious torts of its agents or servants, unless the corporation itself has expressly or by implication of law authorized the tortious act or ratified it subsequent to its commission is the holding of the courts of California,

Colorado, Connecticut, Louisiana, Michigan, Missouri, New Jersey, New York, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Virginia, W. Virginia, Wisconsin and the United States Supreme and Federal Courts. *Turner* v. *N. Beach & Mission Ry. Co.*, 34 Cal. 594; *Mendelsohn & Coleman* v. *Anaheim Lighter Co.*, 40 Cal. 657; *Ristine* v. *Blocker*, 15 Colo. App. 224, 61 Pac. 486; *Maisenbacker* v. *Soc. Concordia of Danbury*, 71 Conn. 369; *Hill* v. *N. O. & G. W. Ry. Co.*, 11 La. Ann. 292; *Gt. Western R. Co.* v. *Miller*, 19 Mich. 305; *Rouse* v. *Metro. St. Ry. Co.*, 41 Mo. App. 298; *Ackerman* v. *Erie Ry. Co.*, 32 N. J. L. 254; *Cleghorn* v. *N. Y. Cent. etc. Ry. Co.*, 56 N. Y. 44, 15 Am. Dec. 375; *Kastner* v. *Long Island Ry. Co.*, 76 App. Div. 323, 78 N. Y. Supp. 469; *Moore* v. *Atchison, Topeka & S. F. Ry. Co.* (1910), — Okla. —, 110 Pac. 1059; *Sullivan* v. *Oregon Ry. & Nav. Co.*, 12 Ore. 392, 7 Pac. 508; *Hagan* v. *Providence & Worcester Ry.*, 3 R. I. 88; *Nashville, etc. Ry.* v. *Starnes*, 9 Heisk. (Tenn.) 52, 24 Am. Dec. 296; *Houston & T. C. Ry. Co.* v. *Cowser*, 57 Tex. 293; *Norfolk & W. R. Co.* v. *Anderson*, 90 Va. 1, 17 S. E. 757; *Ricketts* v. *Chesapeake, etc. Ry. Co.*, 33 W. Va. 433, 10 S. E. 801; *Rueping* v. *Chicago, etc. Ry. Co.*, 116 Wis. 625, 93 N. W. 843; *Bank* v. *Pac. Postal Tel. Co.*, 103 Fed. 841; *Lake Shore, etc. Ry. Co.* v. *Prentice*, 147 U. S. 101, 13 Sup. Ct. 261; *Pacific Packing Co.* v. *Fielding*, 136 Fed. 577, 69 C. C. A. 325. Slight acts of authorization or ratification will generally suffice to subject the corporation to liability for exemplary damages. *Perkins* v. *Mo. Pac. Ry. Co.*, 55 Mo. 201. If the corporation employs a subordinate agent or servant knowing that he is incompetent, and he commits a malicious tort as a result of his incompetency, or if the corporation retains such a servant in its employ after the commission of the tort, such employment and retention are tantamount to authorization and ratification respectively of the malicious act. In such cases, the malice is imputable to the corporation, and exemplary damages may be awarded against it.

It has been generally held also, that the corporation will be deemed to have participated in the commission of a malicious act in a case where the *managing officers* or *officer* of the corporation, as the directors, the president or vice-president, or general manager, etc., committed the act while within the scope of their authority; that the acts of such governing officers are to be considered *pro hac vice* the acts of the corporation, and it is liable in exemplary damages therefor. *Bingham* v. *Lipman, Wolfe & Co.*, 40 Ore. 363, 67 Pac. 98; *Funk* v. *Kerbaugh*, 222 Pa. 18, 70 Atl. 953; *Western Cottage Piano & Organ Co.* v. *Anderson*, 97 Tex. 432, 79 S. W. 516; *Arkansas Const. Co.* v. *Eugene*, 20 Tex. Civ. App. 601, 50 S. W. 736; *Cowan et al.* v. *Winters*, 96 Fed. 929, 37 C. C. A. 628; *Denver & Rio Grande Ry. Co.* v. *Harris*, 122 U. S. 597.

In many jurisdictions, however, it is the established rule that a corporation is chargeable with exemplary damages for any act of its agent or servant which would subject the agent or servant himself to exemplary damages; and that no authorization nor subsequent ratification by the corporation of the malicious act is necessary to subject it to such liability. Such has been the holding in Alabama, Arkansas, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Maine, Maryland, Mississippi, Nevada, New Hampshire, North

Carolina, Ohio, Pennsylvania, and South Carolina. *Alabama, etc. Ry. Co.* v. *Sellers,* 93 Ala. 9, 9 South. 375; *Citizens St. Ry. Co.* v. *Steen,* 42 Ark. 321; *Singer Mfg. Co.* v. *Holdfodt,* 86 Ill. 455, 29 Am. Rep. 43; *Aygarn* v. *Rogers Grain Co.,* 141 Ill. App. 402; *Jeffersonville R. Co.* v. *Rogers,* 38 Ind. 116, 10 Am. Rep. 103; *Wheeler & Wilson Mfg. Co. et al.* v. *Boyce,* 36 Kan. 350, 13 Pac. 609; *Louisville & Nashville Ry. Co.* v. *Ballard,* 85 Ky. 307; *Louisville & N. R. Co.* v. *Roth* (1908), — Ky. —, 114 S. W. 264; *Ramsden* v. *Boston & Albany Ry. Co.,* 104 Mass. 117; *Goddard* v. *Grand Trunk Ry.,* 57 Me. 84; *Hanson* v. *European & N. Am. Ry. Co.,* 62 Me. 84, 16 Am. Rep. 404; *Balto. etc. Ry. Co.* v. *Blocher,* 27 Md. 277; *Pullman Palace Car Co.* v. *Lawrence,* 74 Miss. 782, 22 South. 53; *Quigley* v. *Cent. Pac. Ry. Co.,* 11 Nev. 350, 21 Am. Rep. 757; *Hopkins* v. *Atlantic etc. Ry. Co.,* 36 N. H. 9, 72 Am. Dec. 287; *Purcell* v. *Richmond, etc. Ry. Co.,* 108 N. C. 414, 12 S. E. 954; *Atlantic and Gt. Western Ry. Co.* v. *Dunn,* 19 Ohio St. 162, 2 Am. Rep. 382; *Lake Shore Ry. Co.* v. *Rosenzweig,* 113 Pa. 535; *Hart* v. *Railroad Co.,* 32 S. C. 427, 12 S. E. 9; *Hypes* v. *South Ry. Co.,* 82 S. C. 315, 64 S. E. 395. The prevailing principle underlying these decisions is that since a corporation can act only by its agents or servants, it would escape liability to exemplary damages altogether unless the malice and wantonness of its agents and servants were imputed to it. Authorization or ratification of the malicious act by the corporation is therefore held not pre-requisite to the imposition of exemplary damages on the corporation.

It is manifest, from an examination of the cases above cited, that great contrariety exists between the courts of the several states, as to the circumstances under which exemplary damages are chargeable against the corporation. It is the purpose of this article to determine, if possible, the correct theory of law underlying the decisions, taking into consideration the inherent character of exemplary damages, the rules pertaining to the liability of natural persons as principals, and their application to the corporation.

The foundation of the doctrine of exemplary damages is stated by Mr. SEDGWICK (1 SEDGWICK DAM. Ch. XI.) to be, "That whenever the elements of fraud, malice, gross negligence or oppression mingle in the controversy, the law, instead of adhering to the system, or even the language of compensation, permits the jury to give what it terms punitive, vindictive or exemplary damages; in other words blends together the interest of society and of the aggrieved individual, and gives damages not only to recompense the sufferer, but to punish the offender." Exemplary damages, therefore, are awarded strictly by way of punishment to the wrongdoer, and as an example to other members of the community. In the case of a natural person as principal, it is undoubtedly the better opinion that no recovery of *exemplary* damages can be had against the principal for the malicious act of an agent or servant unless the principal expressly authorized the act as it was performed, or ratified it (*Lienkauf & Strauss* v. *Morris,* 66 Ala. 406; *Becker* v. *Dupree,* 75 Ill. 167; *Eviston* v. *Cramer,* 57 Wis. 570; *Kilpatrick* v. *Haley,* 66 Fed. 133, 13 C. C. A. 480), or was grossly negligent in hiring the agent or servant, (*Burns* v. *Campbell,* 71 Ala. 271; *Sawyer* v. *Sauer,* 10 Kan. 466), or in not preventing him from committing the act, (*Freese* v. *Tripp,* 70 Ill. 496; *Kehrig* v.

Peters, 41 Mich. 475). A natural principal, therefore, although he is liable to make *compensation* for injuries inflicted by his agent or servant within the scope of his employment, cannot be held liable for *exemplary* or *punitive* damages, unless there is proof to implicate the principal and make him *particeps criminis* of his agent's or servant's act. *Pollock* v. *Gantt,* 69 Ala. 373; *Calvin* v. *Peck,* 62 Conn. 155, 25 Atl. 355; *Grund* v. *Van Vleck,* 69 Ill. 478; *Brantigam* v. *White,* 73 Ill. 561; *Rosecrans* v. *Barker,* 115 Ill. 331; *Boulard* v. *Calhoun,* 13 La. Ann. 445; *McCarty* v. *De Armit,* 99 Pa. St. 63; *Willis* v. *McNeill,* 57 Tex. 465; *The Amiable Nancy,* 3 Wheat. (U. S.) 546; 1 SEDGWICK, DAM., § 378; 2 SUTHERLAND, DAM., § 408.

Is there any legal principle or reason of public policy by virtue of which another and different rule of liability should be imposed upon an artificial person than on a natural person? That corporations are persons within the meaning of the 14th Amendment of the United States Constitution; that they can invoke the benefit of that provision of the Constitution, which guarantees to all persons the equal protection of the laws, are propositions which have been decided affirmatively by the United States Supreme Court. *United States* v. *Amedy,* 11 Wheat. 392; *Santa Clara Co.* v. *So. Pac. Ry. Co.,* 118 U. S. 394; *Missouri Pac. Ry. Co.* v. *Mackey,* 127 U. S. 205; *Minneapolis & St. L. Ry. Co.* v. *Beckwith,* 129 U. S. 26. Moreover it has been specifically decided that a corporation is liable *civiliter* for torts committed by its servants and agents precisely as a natural person. *Philadelphia, W. & B. R. Co.* v. *Quigley,* 21 How. 202; *Denver & Rio Grande Ry. Co.* v. *Harris,* 122 U. S. 598; *Wilkinson* v. *Dodd,* 42 N. J. Eq. 234; *Mo. Pac. Ry. Co.* v. *Richmond,* 73 Tex. 568.

The two preceding paragraphs constitute the two premises of a syllogism, the necessary conclusion of which is that a corporation should not be liable to be punished by exemplary damages for the malicious torts of its agents or servants, unless the corporation itself has expressly or by implication of law committed, participated in, or authorized the tortious act, or ratified the act subsequent to its commission.

Neither law nor public policy requires, we believe, that a different and stricter rule of liability for the acts of subordinate agents and servants should be imposed on an artificial than on a natural principal. The chief argument in favor of such a discrimination is that a corporation is capable of action only through the medium of agents; and that, being an artificial creation, it touches the public only through its agents and servants, and consequently public policy requires that the malice, wantonness, and oppressiveness of the agent or servant be imputed to the corporation. However, the *directors* or *governing body* of a corporation are, in legal contemplation, deemed to be the mind and soul of the corporate entity, and constitute its thinking and acting capacity. What *they* may do as the representatives of the corporation, the corporation must be deemed to do, and the motives and intentions of the *directors,* or other *discretionary officers,* acting by and under their immediate authority, are to be imputed to the corporation. *Bingham* v. *Lipman, Wolfe & Co.,* supra, et seq. Thus the liability of a natural and artificial principal are reducible to common terms; and it seems reasonable to conclude that for

the malicious acts of *subordinate* and *ministerial agents* and servants the one should be required to assume no greater or less degree of liability than the other.

Another argument in favor of an unrestricted imposition of exemplary damages on a corporation for the malicious acts of its servants, is that advanced in *Goddard* v. *Grand Trunk Ry. Co.,* supra, to the effect that the influence of a higher degree of liability will be to cause common carriers and other quasi-public corporations to use greater diligence in the selection of their servants. Thus say the court, "when it is thoroughly understood that it is not profitable to employ careless and indifferent agents or reckless and insolent servants, better men will take their places and not before. * * It (the imposition of exemplary damages) will be an impressive lesson to these defendants of the risk they incur when they retain in their service servants known to be reckless and unfit for their places." Undoubtedly the employment by a corporation of an agent or servant known to be incompetent, or the retention of an agent or servant in its employment after the commission of a malicious act is by implication of law equivalent to authorization and ratification respectively of the resulting malicious act by the corporation. But unless evidence of such knowledge by the corporation, or the retention of the agent appear, or some circumstance making the corporation itself *particeps criminis* of the wrongful act, its liability, we believe, should be limited to compensatory damages.

Other courts which allow exemplary damages in the absence of authorization or ratification of the malicious act do so, in the case of quasi-public corporations, on the ground that such corporation owes a duty to the public, for the violation of which exemplary damages should be awarded against the corporation as a matter of public policy. Public policy undoubtedly demands that a quasi-public corporation, such as a common carrier, should use reasonable care and diligence in the selection of its servants, and the employment or retention in service of agents and servants known by the corporation to be incompetent, as we have seen, amounts to an implied authorization and ratification respectively of the resulting malicious act for which exemplary damages may be awarded. But if the corporation exercise reasonable diligence and care in selecting its agents and servants, its liability should manifestly be limited to compensation for the injuries inflicted. A common carrier by reason of its contract obligations to its passengers, is undoubtedly liable to answer in compensatory damages for injuries resulting from the wantonness of its subordinate agents and servants, notwithstanding the exercise of care on its part in selecting its servants, while engaged in performing a duty which the carrier owes to the passenger. 4 ELLIOTT ON RAILROADS, § 1638. The object of exemplary damages, however, is to prevent the repetition of a wrong; but how can an individual or corporation be deterred from doing that which cannot by reasonable diligence be prevented?

The three cases decided by the Supreme Courts of California, Oklahoma, and Wisconsin, during the past year, if our conclusions be sound, announce the correct rules of law applicable to the liability of a corporation to answer in exemplary damages for the malicious acts of its agents and servants.

Public policy no doubt requires that corporations should be divested of every feature of a fictitious character, which would tend to exempt them from the ordinary liabilities necessary to the protection of the public in its dealings with them. For acts and resulting injuries committed by their subordinate agents and servants in the scope of their authority, they should be required to make adequate compensation to the injured party. When we go beyond the limit of compensation however, and inflict punishment, we enter the domain of personal responsibility, which must be founded on the act and motive of the wrongdoer; and to inflict punishment on either an individual or corporation for the malicious acts of its subordinate agents and servants, in the absence of evidence establishing participation in, or authorization or ratification of, the malicious delictual act, is practically to require that the individual or corporation be omnipotent in controlling the motives and passions of its employees, which is unreasonable. A. J. A.

WHEN IS A WILL SIGNED "AT THE END?"—The Pennsylvania statute, like that of most of the states, requires that "every will shall be in writing, and unless the person making the same shall be prevented by the extremity of his last sickness, shall be signed by him at the end thereof." In *In re Stinson's Estate; Appeal of Stroud et al.* (1910), — Pa. —, 77 Atl. 807, Agnes J. Stinson executed a document on a single sheet of legal cap paper, folded in the middle in the usual way along the short dimension, making four pages of equal size. The writing in question was all on the first, second and third pages, the fourth being left blank. The document was holographic, the signature of the maker, following the usual testimonium clause, was in the middle of the second page. To the left of this signature appeared those of two subscribing witnesses. The first, second and third pages contained dispositive clauses. The question was whether or not the will was signed "at the end" within the meaning of the statute; whether the end of the will is "the physical end of the writing, the point which is spatially farthest removed from the beginning, or the logical end of the testator's disposition of his property, wherever that end manifestly appears on the paper." The court concluded from an inspection of the document that the testatrix, after having written on the first page, skipped the second, proceeded to the third, and, having reached the bottom of it, returned to the second, and, when she had completed the disposition of her estate at about the middle of that page, signed her name there in the presence of two witnesses. *Held,* the will was signed "at the end" within the statute. Testator's written disposition is his *animus testandi.* When it is fully expressed, his will is finished, and the end is reached and there his signature must appear in order to fulfil the statute. What he regards as the end of his will, and what must manifestly be regarded as the end of it, from an inspection and reading of the writing, is the end of it under the statute, which contains nothing about the spatial or physical end of it.

The court expressly confirmed its dictum in *Baker's Appeal,* 107 Pa. St. 381, 52 Am. Rep. 478, where the will was written on the first and third pages of the paper and signed at the end of the third page. A devise on the third